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CHARLES ELMORE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 387

UNITED STATES OF AMERICA,
Petitioner,
vs.
ALCEA BAND OF TILLAMOOKS, ET AL.,
Respondents.

APPENDIX TO BRIEF FOR RESPONDENTS CONTAINING FINDINGS DIRECTLY BEARING ON QUESTION PRESENTED AND ACTS OF CONGRESS REFERRED TO IN BRIEF.

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JURISDICTIONAL ACT

(Public—No. 332-74th Congress)

(S. 2761)

An Act

Conferring jurisdiction upon the Court of Claims to hear and determine claims of certain bands or tribes of Indians residing in the State of Oregon.

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That jurisdiction is hereby conferred on the Court of Claims with the right of appeal to the Supreme Court of

the United States by either party, as in other cases, to hear, examine, adjudicate, and render final judgment (a) in any and all legal and equitable claims, arising under or growing out of any treaty, agreement, Act of Congress, or Executive order, or for the failure of the United States to pay any money or other property due, which those Indian tribes or bands, or portions thereof, and their descendants, described in the ratified treaties of September 10, 1853 (10 Stat. 1018), September 19, 1853 (10 Stat. 1027), November 18, 1854 (10 Stat. 1122), November 25, 1854 (10 Stat. 1125), January 22, 1855 (10 Stat. 1143) and December 21, 1855 (12 Stat. 981), may have against the United States; and (b) any and all legal and equitable claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon the whole or any part of the lands and their appurtenances occupied by the Indian tribes and bands described in the unratified treaties published in Senate Executive Document Numbered 25, Fifty-third Congress, first session (pp. 8 to 15), at and long prior to the dates thereof, except the Coos Bay, Lower Umpqua and Siuslaw Tribes, it being the intention of this Act to include all the Indian tribes or bands and their descendants, with the exceptions named, residing in the then Territory of Oregon west of the Cascade Range at and long prior to the dates of the said unratified treaties, some of whom, in 1855, or later, were removed by the military authorities of the United States to the Coast Range, the Grande Ronde, and the Siletz Reservations in said Territory.

Sec. 2. That if any claim or claims be submitted to said courts hereunder they shall settle the rights therein, both legal and equitable of each and all the parties thereto, notwithstanding the lapse of time or the statutes of limitation; and any payment which may have been made under any claim or agreement shall not operate as an estoppel but may be pleaded as a set-off, and the United States shall be allowed to plead, and shall receive credit for all sums including gratuities, paid to or expended for the benefit of the respective tribes or bands of Indians, but no expenditures for the benefit of these Indians made out of appropriations authorized by the Act of June 18, 1934 (48 Stat. L. 984), shall be considered as offsets. The claim or claims

of each tribe or band may be presented separately or jointly by petition, subject, however, to amendment and consolidation in proper cases. Such action or actions shall make the petitioner or petitioners party plaintiff or plaintiffs and the United States party defendant; and any nation, tribe or band the court may deem necessary to a final determination of such suit or suits may be joined therein by order of the court.

The petition shall set forth all the facts upon which the claims are based and shall be signed and verified by the attorney or attorneys employed to prosecute such claim or claims and who are under contract with said Indians approved in accordance with existing law. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act.

Official letters, papers, documents and public records, or certified copies thereof, may be used in evidence and the departments of the Government shall allow the attorney or attorneys access to such treaties, papers, correspondence, or records as may be needed by said attorney or attorneys.

Sec. 3. That upon the final determination of such suit, or suits, the Court of Claims shall decree such fees not exceeding 10 per centum of the amounts recovered as it shall find reasonable to be paid the attorney or attorneys employed therein by said Indians or bands of Indians, under contracts negotiated and approved as provided by existing law, together with all necessary and proper expenditures incurred in the preparation and prosecution of the suit or suits.

Sec. 4. The proceeds of all amounts, if any, recovered for said Indians, less attorneys' fees and expenses, shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled therefor and shall draw interest at the rate of 4 per centum per annum from the date of the original judgment or decree and thereafter shall be subject to appropriation by Congress.

Approved, August 26, 1935.

Selected Findings Directly Bearing on Question Presented

"Special Findings of Fact (R. 23)

1. Clause (b) of the special jurisdictional act under which this suit was brought confers upon this court jurisdiction to hear, adjudicate, and render final judgment in and upon 'any and all legal and equitable claims arising under or growing out of the original Indian title, claim, or rights in, to, or upon the whole or any part of the lands and their appurtenances occupied by the Indian tribes and bands described' in the unratified treaty of August 11, 1855, 'at and long prior to the dates thereof.' Certain tribes, which also signed this unratified treaty of 1855, but which are not parties to this suit, were expressly excluded by the jurisdictional act because separate provisions had been made by Congress with respect to their claims. The Indians so excluded were the Coos Bay, Lower Umpqua, and Siuslaw tribes (R. 23).

* * * * * * *

2. March 3, 1847 (9 Stat. 203), Congress passed an act to amend the act of June 30, 1834 (4 Stat. 735), 'for the organization of the Department of Indian Affairs,' and to amend an act of the same date (4 Stat. 729) 'to regulate trade and intercourse with the Indian tribes,' in section 1 of which act of 1847 it was provided 'That the limits of each superintendency, agency, and subagency shall be established by the Secretary of War, either by tribes or geographical boundaries; and the superintendents, agents, and subagents shall be furnished with offices for the transaction of the public business, and the agents and subagents with houses for their residences, at the expense of the United States * * *.' By the act of August 14, 1848 (9 Stat. 323) Congress created the territory of Oregon, within the area of which lived various Indian tribes in addition to plaintiff tribes and bands, and there was inserted in sec. 1 of that act the provision that nothing therein contained 'shall be construed to impair the rights of person or property not pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty

between the United States and such Indians, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed.' This provision was made applicable to all territories and territorial governments which embraced Indians (R. S. 1839, 1840).

June 5, 1850 (9 Stat. 437), Congress passed an act entitled 'An act authorizing the Negotiation of Treaties with the Indian Tribes in the Territory of Oregon, for the Extinguishment of their Claims to Lands lying west of the Cascade Mountains, and for other purposes.' Sec. 1 of this act authorized the President to appoint one or more commissioners to negotiate treaties with the several tribes for the extinguishment of their claims to lands lying west of the Cascade Mountains; and, if practicable, for their removal east of said mountains. The President was also directed to obtain their assent and submission 'to the existing laws regulating trade and intercourse with the Indian tribes in the other Territories * * *.' Sec. 2 authorized the appointment, by and with the advice and consent of the Senate, of a superintendent of Indian Affairs for the Territory of Oregon to exercise a general superintendence over all Indians in Oregon and to exercise and perform all powers and duties assigned by law to other Indian superintendents. Sec. 4 authorized the President, by and with the advice and consent of the Senate, to appoint one or more Indian agents, not exceeding three, to perform all the duties as its agent to such tribe or tribes as should be assigned to him by the superintendent at the direction of the President. Sec. 5 provided 'That the law regulating trade and intercourse with the Indian tribes east of the Rocky Mountains, or such provisions of the same as may be applicable, be extended over the Indian tribes in the Territory of Oregon.' Sec. 6 appropriated $25,000 to carry into effect the provisions of the act. Subsequent appropriations were made from time to time to carry out the provisions of the act and, also, for expenses of negotiating and making treaties with the Oregon Indians for extinguishment of their claims to lands.

The superintendent and agents were forthwith appointed. Anson Dart was appointed Indian superintendent and was later succeeded by General Joel Palmer. Thereafter, under authority, direction, and instructions of the Congress and the President, Dart and Palmer negotiated various treaties in 1851 and subsequently with various tribes and bands of Indians in Oregon, including the unratified treaty of August 11, 1855 made by General Palmer with certain of plaintiff tribes and bands for extinguishment of original Indian title to lands claimed and occupied by them. The Indian tribes, parties to this treaty of 1855, were the tribes and bands of Tillamooks, the Sinslaw or Siuslaw, the Umpqua, the Kowes Bay or Coos Bay, the Coquille or Nas-o-mah, the Too-too-to-ney, and the Chetco.

Prior to the negotiation and signing of the treaty of August 11, 1855, nineteen separate treaties had been negotiated and made in 1851 with various tribes and bands of Indians, including the Tillamook (North), not plaintiff Tillamooks tribe; the Clatsop (plaintiff herein); the Ne-ha-lum (plaintiff herein), and various bands of the Chinook tribe (also a plaintiff herein).

Six other treaties were negotiated, made, and signed in 1853, 1854 and 1855 by Commissioner Anson Dart or by Gen. Palmer, assisted by the Indian agents, with the various tribes and bands named therein, for extinguishment of Indian claims of original Indian titles. These six treaties referred to in clause (a) of the jurisdictional act were ratified. None of the claims made in this suit is directly based on those treaties.

The unratified treaty of August 11, 1855, with which we are here concerned and which, as hereinafter stated, was not submitted to the Senate until February 11, 1857, was not rejected by the Senate but was simply not reported out by the Committee on Indian Affairs to which it had been referred. Apparently the reason this treaty of August 11, 1855, and certain treaties made with various tribes and bands in 1851 were not reported out by the Senate Committee for action by the Senate was because the August 11, 1855, treaty described the land to be ceded as overlapping at the north portion certain lands claimed by the North Tillamooks, Chinook, Clatsop, and

Ne-ha-lum tribes who did not sign the 1855 treaty and with whom a separate treaty in 1851 had been negotiated and signed; and, also, because certain other treaties negotiated and signed in 1851 with certain other tribes and bands were in effect superseded by subsequent treaties made with some of the same tribes and bands in 1853, 1854, and 1855, which subsequent treaties had been ratified (R. 23-27).

* * * * * * * *

3. Congress enacted provisions from time to time and made various appropriations to carry out and fulfill ratified treaties made by Anson Dart, Gen. Palmer, and others with various tribes of Oregon Indians (some of whom are plaintiffs herein) for the extinguishment by cession to the United States of their claims of original use and occupancy title to lands.

* * * * * * *

None of the unratified treaties mentioned in finding 2, made in 1851, including those made in that year with the seven bands and tribes who were paid in full, as above-mentioned, and none of the above-mentioned six ratified treaties included, as ceded land, any of the land for which compensation is claimed in the petition herein by plaintiff tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos.

All the above-mentioned ratified treaties except the sixth had been made and ratified before the treaty of August 11, 1855, with which we are here concerned, was transmitted by the President to the Senate and before the President issued the Executive Order of November 9, 1855, hereinafter mentioned, conditionally creating the Coast Reservation in part out of certain lands involved in this case and ceded under the August 11, 1855 unratified treaty. The reservation was created, subject to future curtailment if the President should deem proper, for the Indian tribes and bands party to the 1855 treaty and other tribes and bands which the President might place upon said reservation.

As hereinafter mentioned, it appears that some of the Indians of some of the above-mentioned tribes and bands

whose treaties were ratified were subsequently removed to and placed upon the reservation described in the Executive Order of November 9, 1855, notwithstanding the treaty of August 11, 1855 with the Indians, who claimed and held original Indian title to such lands had not been ratified, and such original Indian title had not been legally extinguished.

Gen. Palmer, assisted by the Government Indian agents, made investigations and reports as to the lands and areas thereof claimed, occupied, and used by plaintiff tribes and bands of Tillamooks, Coquilles, Too-too-to-neys, and Chetcos, parties to the unratified treaty of August 11, 1855. Plaintiff tribes and bands, except those mentioned in finding 5, signed and accepted this treaty dated August 11, 1855 on August 11, August 17, August 23, August 30 and September 8, 1855; because of these different dates of signing by the different tribes, the jurisdictional act referred to the 1855 treaty as 'treaties.' So far as here material, the unratified treaty of August 11, 1855, was as follows:"

> (here follows a quotation of the unratified treaty by which the lands ceded, including the lands recovered herein, is set out a reservation for Respondents and others was provided and the usual annuity payments are stipulated) (R. 27-32).

"4. Plaintiff tribes and bands (except the plaintiffs Chinook, Clatsop, and the Ne-ha-lum tribes, the Confederated tribes of the Grand Ronde Community, Oregon, so-named, Willamette Valley Confederated tribes of Indians, so-named, and the Siletz Confederated tribes, so-named) were parties signatory to the unratified treaty above set out and signed by the chiefs and headsmen of the tribes and bands as set out therein, respectively. The treaty was signed by Joel Palmer, duly authorized by the President of the United States on behalf of the government of the United States. It was forwarded to the office of the Commissioner of Indian Affairs, Interior Department, by Superintendent Palmer on November 14, 1855, but was not transmitted by the Commissioner of Indian Affairs to the Secretary of the Interior for submission to the President until February 5, 1857. The reason for this delay from November 14, 1855,

to February 5, 1857, was that this treaty of August 11, 1855, with numerous other treaties negotiated and made with the various tribes and bands of Indians in Oregon, was received by the Commissioner of Indian Affairs during a recess of Congress—which treaties were afterwards withheld by the Commissioner of Indian Affairs because of the hostile condition of the Government's relation with certain Indians in that country, which, however, was not caused by plaintiff Indians. Due to the intrusion and conduct of certain white settlers, and the resentment thereof by certain Indians, there were open hostilities with the Rogue River Indians, a great many of whom were exterminated. A great many of the other Rogue River bands of Indians were driven from their homes into the mountains, but after hostilities ceased they were rounded up and permanently placed upon the Coast Reservation, hereinafter mentioned, created in part out of the land claimed by plaintiff Tillamooks tribe. A [illegible] of these Rogue River Indians died of disease contracted from exposure during this period. When various other treaties which had been negotiated, made, and executed by Anson Dart, Gen. Palmer, and others with various tribes and bands of Indians were finally sent by the Commissioner of Indian Affairs to the Secretary of the Interior, and, by him, to the President, who transmitted them to the Senate for ratification, the treaty of August 11, 1855 with certain plaintiff tribes and bands was accidentally and unintentionally overlooked and not sent along with the other treaties. Some of the treaties transmitted at that time for ratification appear to have been those made in 1853, 1854, and 1855, mentioned in clause (a) of the jurisdictional act, certain of which tied in with the Coast Reservation defined and sought to be created by art. 1 of the unratified treaty with certain plaintiff bands and tribes of August 11, 1855, and as described in the Executive Order of November 9, 1855, hereinafter referred to.

The 1855 treaty and the original papers, including the instructions to and the reports from Gen. Palmer as appear from the Journal of the Senate, were sent to the Senate by the President February 11, 1857; on February 18 the treaty was read and referred to the Committee on Indian Affairs. The treaty was not reported out by the

committee and Congress adjourned shortly after the treaty was submitted; it was never acted upon by the Senate, as shown by Senate Executive Document No. 25, 53rd Cong., 1st sess., referred to in clause (b) of the jurisdictional act herein.

At the next session of Congress this treaty of August 11, 1855, and certain other treaties which had been negotiated and made in 1851, were not reported by the Indian Affairs' Committee to the Senate for consideration, apparently for the reasons hereinbefore mentioned, and these treaties were never thereafter acted upon by the Senate (R. 32-34).

5. Prior to execution of the treaty of 1855, and after Joel Palmer became superintendent of Indian Affairs in Oregon, he was duly authorized and directed by the President to draft and negotiate treaties for the purpose of extinguishing the Indian title to lands in Oregon Territory, including the lands described in the unratified treaty of 1855, with certain of plaintiff tribes and bands. Palmer was notified of his appointment by the Commissioner of Indian Affairs August 12, 1854, and in the performance of such duties and functions, and by direction of the President, through the Bureau of Indian Affairs, it became and was his duty to investigate and ascertain the location of the several Indian tribes and bands who occupied and held possession of lands, the areas thereof and the nature and extent of such occupancy and use, and to secure the signatures of the tribes and bands of Indians who owned and occupied the lands and held the original Indian title sought to be extinguished. This he did with care and thoroughness.

In the notice of his appointment, transmitted by the Commissioner of Indian Affairs, Gen. Palmer was advised that 'You will furnish me with a skeleton map of Oregon Territory showing the location of the different tribes, with the extent of territory claimed by each and the nature or tenure of the claim and as treaties are made designate the reserve provided for Indian use with such precision that it may be laid down on the map here."

In further carrying out his instructions and duties Palmer made an extended trip, or trips, over the land de-

scribed in the treaty of August 11, 1855, assisted by Oris Taylor and J. L. Parrish, Indian Agent, Port Orford District, and thus obtained the added store of information required by the Bureau of Indian Affairs. The Port Orford District, of which J. L. Parrish was the duly appointed Indian Agent, was located on the coast of southern Oregon in the area of the lands occupied and held by the Indians of the Coquille, the Too-too-to-ney, and the Chetco tribes. Gen. Palmer accumulated and submitted detailed data of the geographical location and names of the tribes and bands; and submitted definite boundaries of the lands of plaintiff tribes and bands of the Tillamooks, Too-too-to-neys, Coquilles and Chetcos who were parties to the treaty of August 11, 1855, in the form of a written report to the Commissioner of Indian Affairs, accompanied with a detailed report from J. L. Parrish, Indian agent, in which was set out the location of the various tribes and bands of Indians.

The Too-too-to-ney, the Chetco, and the Coquille tribes are described in the Palmer report as occupying 'That part of Oregon south of the waters of Coos Bay and west of the Summit of the Coast Range of Mountains.'

The Palmer report further stated:

> A detailed statement of Indian affairs in the Port Orford district will be found in the accompanying report of Agent Parrish. He enumerates twelve distinct bands, with an aggregate population of 1,311 souls, and includes them all in the Too-ton-ton (Too-too-to-ney) tribe. These bands, however, speak at least four distinct languages, and but few in each band can converse with those of another. Those grouped as one band often reside in several villages. These bands are scattered over a great extent of country—along the coast and along the streams from the California line to 20 miles north of the Coquille (region), and from the ocean to the summit of the Coast Range of mountains. I visited several bands in person, and directed Mr. Taylor to accompany and assist the agent (Parrish) in ascertaining the numbers of the remainder. Excepting the Chetcas (Chetcos) and Coquilles, I found these

Indians at peace with the whites and among themselves. They are willing the whites should occupy their lands, provided they are permitted to retain their fisheries, from which they mainly derive their subsistence.

The territory of plaintiff bands of Tillamooks is set out in the Palmer report as 'The country along the coast from Umpqua River to the Ne-a-ches-na (river), a distance of about 120 miles, is occupied by five bands of the Tillamook(s) tribe' (R. 34-35).

6. Plaintiffs, the Tillamook, Coquille, Too-too-to-neys, and Chetco tribes and bands, parties to the unratified treaty of August 11, 1855, had exclusively occupied, held, and used from time immemorial (as shown by the proof from as early as 1750) that part of the lands embraced and described in the unratified treaty of 1855, as hereinafter particularly described, lying south of the north line of the Coast Reservation, mentioned as a reserve for the Indians in the unratified treaty of August 11, 1855, and described in a subsequent Executive order of November 9, 1855. The plaintiff tribes and bands above-mentioned in this finding had immemorially, and long prior to the date of the unratified treaty of August 11, 1855, held original Indian title, claim and rights to, in, and upon the lands and appurtenances thereon within the boundaries as are hereinafter in findings 8, 9, and 10 specifically described and set forth (R. 35-36).

7. The four bands of plaintiff Tillamooks tribe which lived south of Cape Lookout and the north line of the reservation described in the treaty were designated in the treaty as bands of Tillamooks, and signed such treaty without further designation. However, the four bands constituted a tribe all speaking the same language. They were sometimes called the Yacons or Southern Tillamooks, and they held and occupied the contiguous lands, as hereinafter described in finding 8.

The Coquille tribe of Indians was composed of bands as set out in the caption of the petition herein and in the treaty of 1855. These bands of Coquille Indians were designated

as a tribe by the language of the treaty of August 11, 1855, preceding the signatures of their chiefs and headmen.

The Too-too-to-ney tribe of Indians was composed of bands as set out in the caption hereof, and were so designated in the language of the treaty of August 11, 1855, preceding the signatures of their chiefs and headmen.

The Chetco tribe was at all times considered as a part of the Too-too-to-ney tribe, but there was a slight difference in the language of the two tribes. They were designated in the report of Gen. Palmer as the Too-too-to-neys, referred to in the treaty as the 'Chetco tribe', and, although signing the treaty in the column with the Too-too-to-ney bands, signed the treaty as 'Chetco Tribe.' This tribe occupied the tract of land which was contiguous to the lands of the Too-too-to-ney tribe, as hereinafter described and set forth (R. 36).

8. The bands of plaintiff Tillamooks tribe, the bands of the Coquille tribe, and the bands of the Too-too-to-ney tribe, including the Chetco tribe, are sometimes, for convenience, referred to hereinafter as the Tillamooks, Coquilles, Too-too-to-neys, and the Chetcos, respectively. The land so exclusively occupied, held, and used by plaintiff bands of Tillamooks, and to which they held and owned the original title, claim and right, is described as follows:"

(here follows description of lands of Tillamooks) (R. 37).

"9. The lands so exclusively occupied, held and used by the Too-too-to-neys, including the Chetco tribe, are described as follows:"

(here follows description of lands of Too-too-to-neys and Chetco) (R. 37-38).

"10. The land so exclusively occupied, held and used by the Coquilles is described as follows:"

(here follows description of lands of Coquilles) (R. 38-39).

"11. The Indian tribes and bands above-mentioned occupied more or less accurately described areas of land with

clearly defined boundaries, and lived principally along rivers and creek banks bearing the same name as the tribe living along its banks. Generally, they appear to have taken their tribal designations from, or to have been given the names of certain streams along which they lived, or the streams were named for the Indian tribes.

The above-described lands which were ceded, including a portion of the total area which was designated by the unratified treaty of August 11, 1855, as a residence for Indians, were in the exclusive possession and use of plaintiffs Tillamooks, Too-too-to-ney, Coquille, and the Chetco bands and tribes, parties to this unratified treaty (R. 39).

12. Plaintiffs Tillamooks, Too-too-to-ney, Chetco, and Coquille bands and tribes gave up their original Indian title to their lands in accordance with the conditional promises made by them in the unratified treaty of 1855 and went upon or were removed by the Government to the area mentioned in the treaty as a residence, described as a conditional reservation by the Executive Order of November 9, 1855, and later known as the Coast Reservation. This reservation, as described in the unratified treaty, and which was approximately that described in the Executive Order of November 9, was composed in part of a portion of the lands exclusively used, held and occupied under original Indian title by the plaintiff bands of Indians composing the Tillamooks tribe. A part of the reservation at its south end appears to have included some of the lands claimed by the Coos Bay, Umpqua, or Siuslaw tribes.

This reservation was later reduced or diminished, as hereinafter mentioned, by an Executive Order of December 21, 1865, and, further, by acts of Congress of March 3, 1875, 18 Stat. 420, 446, and May 13, 1910, 36 Stat. 367.

The Tillamook, Too-too-to-ney, Chetco, and Coquille bands and tribes, plaintiffs herein, have never received any compensation for the lands to which they had original Indian title, hereinbefore mentioned in findings 8, 9, and 10, or the lands taken from the reservation and restored to the public domain by reduction of the Coast or Siletz Reservation by Executive Order of 1865 and the act of Congress of 1875, except to the extent that the Indians of the Tilla-

mook, Too-too-to-ney, Coquille, and Chetco tribes benefited with respect to land to which the Tillamooks had original Indian title under the allotment act of February 8, 1887 (24 Stat. 388), the agreement of October 31, 1892 (28 Stat. 286, 323), the act of May 31, 1900 (31 Stat. 221, 223), and the act of May 18, 1916 (39 Stat. 123, 149).

Protests of the failure of the United States to ratify the treaty of August 11, 1855, were continuously made by the Indian tribes and bands, parties thereto, by the Government's Indian superintendents and agents and the Commissioner of Indian Affairs in his annual reports, in practically all reports up to and including 1869, and such protests continued thereafter at various times until the jurisdictional act herein was enacted (R. 39-40).

* * * * * * *

16. The boundaries particularly set forth in finding 14, which were those designated in the Executive Order of November 9, were approximately those of the reservation set out in the unratified treaty of August 11, 1855. Congress acquiesced in and ratified the Executive Order of November 9, 1855, as only conditionally withdrawing the land from public settlement by the passage of the act of March 3, 1875 (18 Stat. 420, 446), hereinafter referred to (R. 48).

17. The land to which plaintiff Tillamooks tribe owned and held original Indian title as hereinbefore described, and as approximately indicated on the above sketch, lay for the most part within the confines of the original Coast Reservation, and such land of this tribe as was within such reservation was taken on November 9, 1855, in part by defendant from the Tillamook tribe for the benefit of other tribes and bands and in part for the benefit of the United States as and when it might desire to use it for public purposes, by virtue of the Executive Order of November 9, 1855, ratified by Congress. The land of the Tillamook tribe, as hereinbefore described in finding 8, as lay outside the boundaries of said Coast Reservation was taken by defendant from said Tillamooks on November 9, 1855, or soon thereafter, as were the lands of the Coquille, Too-too-to-ney,

and the Chetco tribes when these four tribes were moved off their lands in 1855, at or about the date of the Executive Order of November 9 creating the Coast Reservation described therein (R. 49).

18. The land of plaintiff Tillamooks tribe outside the Coast Reservation and all the lands of the Coquille, Too-too-to-ney, and Chetco tribes were taken by inducing and coercing the Indians of these tribes to move from their lands, to which they held original Indian use and occupancy title, to the Coast Reservation upon the promise that the treaty of August 11, 1855, would be ratified and the terms thereof carried out by the United States—which was not done.

The lands formerly held and occupied by plaintiffs Tillamooks, Coquille, Too-too-to-ney, and the Chetco tribes, exclusive of the portion of land of the Tillamooks included in the Coast Reservation, were immediately opened to homestead entry and settlement as public lands of the United States, which action was known to, acquiesced in, and subsequently ratified by Congress; the lands originally within the reservation under the unratified treaty and the Executive Order of November 9, 1855, which were later excluded by the Executive Order of December 21, 1865, and the act of Congress of March 3, 1875, were disposed of as public lands immediately upon the taking effect of such Executive Order and statute (R. 49).

19. After the treaty of August 11, 1855, had been signed by Gen. Palmer on behalf of the United States and by the chiefs and headmen of the Indian tribes and bands, parties thereto, and without awaiting ratification thereof, the United States dispossessed the Indians of the Coquille, Too-too-to-ney, and Chetco tribes, and in part the Tillamooks, all parties to the treaty, of their lands, and without the consent of the Indian tribes mentioned and against their will, independently of the conditional consent expressed by them in the unratified treaty of August 11, 1855, and without compensation then or later, and appropriated such lands for the use and benefit of the United States (R. 49-50).

20. Failure to ratify the treaty of August 11, 1855, left the recognized original Indian title, which the United States took without making compensation, in the Tillamook, Coquille, Too-too-to-ney, and Chetco tribes; and left the United States without legal or equitable rights, under principles applicable to the recognized aboriginal Indian use and occupancy title, to take and treat the lands, exclusively held and possessed by the particular tribes, as public lands without payment of just compensation (R. 50).

• • • • • • •

34. The particular lands for which claim for compensation is made in the petition herein, and as hereinbefore described and to which plaintiffs Tillamooks, Coquille, Too-too-to-ney, and the Chetco tribes held and owned the original Indian title through exclusive use and occupancy from time immemorial, were taken by the United States for a public purpose on or ~~shortly~~ after November 9, 1855, without payment of just compensation (R. 58).

• • • • • • •

An Act to Establish Territorial Government of Oregon, 9 Stat. 323

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that part of the Territory of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude, known as the Territory of Oregon, shall be organized into and constitute a temporary government by the name of the Territory of Oregon: *Provided*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed; • • •

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SEC. 14. *And be it further enacted, That the inhabitants of said Territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States northwest of the River Ohio, by the articles of compact contained in the ordinance for the government of said territory,* on the thirteen day of July, seventeen hundred and eighty-seven; and shall be subject to all the conditions, and restrictions, and prohibitions in said articles of compact imposed upon the people of said territory; and the existing laws now in force in the Territory of Oregon, under the authority of the provisional government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not incompatible with the constitution of the United States, and the principles and provisions of this act; subject, nevertheless, to be altered, modified, or repealed, by the legislative assembly of the said Territory of Oregon; but all laws heretofore passed in said Territory making grants of land, or otherwise affecting or incumbering the title to lands, shall be, and are hereby declared to be, null and void; and the laws of the United States are hereby extended over, and declared to be in force in, said Territory, so far as the same, or any provision thereof, may be applicable (Act of August 14, 1848, 9 Stat. pp. 323, 329). (Italics supplied.)

An Act Authorizing the Negotiation of Treaties With the Indian Tribes in the Territory of Oregon, for the Extinguishment of Their Claims to Lands Lying West of the Cascade Mountains, and for Other Purposes—Act of June 5, 1850.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be authorized to appoint one or more commissioners *to negotiate treaties with the several Indian tribes in the Territory of Oregon, for the extinguishment of their claims to lands lying west of the Cascade Mountains;* and, if found expedient and practicable, for their removal east of said mountains; also, for obtaining their

assent and submission to the existing laws regulating trade and intercourse with the Indian tribes in the other Territories of the United States, so far as they may be applicable to the tribes in the said Territory of Oregon; the compensation to such commissioner or commissioners not to exceed the rate heretofore allowed for similar services.

Sec. 2. *And be it further enacted,* That the President be authorized, by and with the advice and consent of the Senate, to appoint a Superintendent of Indian Affairs for the Territory of Oregon, who shall receive an annual salary of twenty-five hundred dollars, and whose duty it shall be to exercise a general superintendence over all the Indian tribes in Oregon, and to exercise and perform all the powers and duties assigned by law to other superintendents of Indian affairs.

Sec. 3. *And be it further enacted,* That so much of the act to establish the territorial government of Oregon, approved the eleventh (14th) August, 1848, as requires the governor of said Territory to perform the duties of Superintendent of Indian Affairs, and authorizes him to receive a salary therefor, in addition to the salary allowed for his services as governor, be repealed; and that the governor of said Territory shall hereafter receive an annual salary of three thousand dollars.

Sec. 4. *And be it further enacted,* That the President be authorized, by and with the advice and consent of the Senate, to appoint one or more Indian agents, not exceeding three, as he shall deem expedient, each of whom shall receive an annual salary of fifteen hundred dollars, give bond as now required by law, and perform all the duties of agent to such tribe or tribes of Indians in the Territory of Oregon as shall be assigned to him by the superintendent to be appointed by the provisions of this act, under the direction of the President.

Sec. 5. *And be it further enacted, That the law regulating trade and intercourse with the Indian tribes east of the Rocky Mountains, or such provisions of the same as may be applicable, be extended over the Indian tribes in the Territory of Oregon.*

Sec. 6. *And be it further enacted*, That the sum of twenty-five thousand dollars be appropriated, out of any moneys in the treasury not otherwise appropriated, to carry into effect the provisions of this act.

Approved, June 5, 1850. (Act of June 5, 1850, 9 Stat. p. 437.) (Italics supplied.)

Ordinance of 1787 Establishing the Northwest Territory Made Applicable to Oregon Territory by Act Creating That Territory.

Sec. 14. It is hereby ordained and declared by the authority aforesaid that the following articles shall be considered as articles of compact between the original States and the people and states in said territory and forever remain unalterable, unless by common consent, to-wit:

Article I

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Article II

The inhabitants of the said territory shall always be entitled to the benefits of writs of *habeas corpus*, and of the trial by jury of a proportionate representation in the legislature, and of judicial proceeding according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate and no cruel or unusual punishment shall be inflicted. No man shall be deprived of his liberty or property but by the judgment of his peers or the law of the land, *and should the public exigencies make it necessary for the common preservation to take any person's property or to demand his particular services, full compensation shall be made for the same.* And, in the just preservation of rights and property it is understood and declared that no law ought ever to be made or have force in the said territory, that shall in any manner whatever interfere with or affect private contracts, or engagements *bona fide*, and without fraud previously formed.

Article III

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. *The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed unless in just and lawful wars authorized by Congress, but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.* (Italics supplied.)